

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDELTON DIVISION

TERRANCE WESLEY GIPSON,

Petitioner,

v.

MARK NOOTH,

Respondent.

No. 2:15-cv-02244-CL

OPINION AND ORDER

MOSMAN, J.,

On January 11, 2018, Magistrate Judge Mark D. Clarke issued his Findings and Recommendation (F&R) [54], recommending that Petitioner Terrance Wesley Gipson's petition for Writ of Habeas Corpus [2] should be DENIED and this case DISMISSED. Judge Clarke also recommended I GRANT a Certificate of Appealability on the issue of whether Mr. Gipson's trial counsel rendered ineffective assistance by failing to cross-examine and call potential witnesses for potential impeachment purposes. Mr. Gipson objected [59].

DISCUSSION


The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to

make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Clarke's recommendation and I ADOPT the F&R [54] as my own opinion. Mr. Gipson's petition for Writ of Habeas Corpus [2] is DENIED and this case DISMISSED. I also GRANT a Certificate of Appealability on the issue of whether Mr. Gipson's trial counsel rendered ineffective assistance by failing to cross-examine and call potential witnesses for potential impeachment purposes.

IT IS SO ORDERED.

DATED this 25th day of April, 2018.


MICHAEL W. MOSMAN
Chief United States District Judge